

Connecticut General Assembly

HOUSING COMMITTEE

January 2015

BENEFITS AND TRACK RECORD OF GENERAL STATUTES § 8-30g, THE AFFORDABLE HOUSING LAND USE APPEALS ACT; RELATIONSHIP TO INCENTIVE HOUSING ZONES

This statement has been endorsed by the Connecticut Housing Coalition, the Partnership for Strong Communities, the Connecticut Fair Housing Center, the Home Builders and Remodelers Association of Connecticut, and the Legal Assistance Resource Center of Connecticut.

1. **Housing Production.** The Affordable Housing Land Use Appeals Act, General Statutes § 8-30g, was adopted in 1989 at the recommendation of a Blue Ribbon Commission that documented municipal land use commission resistance to lower cost housing proposals, despite rapidly escalating prices that were putting most of Connecticut's homes out of reach of moderate and low income families. During its 24 years as Connecticut law, § 8-30g has spurred the approval and construction or preservation of workforce housing that would not otherwise have occurred.

Current counts, backed by the DECD "Ten Percent List," show, in all towns that are currently below the ten percent level and thus subject to the Act, 5,868 "Deed Restricted" housing units, meaning units that are currently subject to maximum price or rent restrictions that satisfy § 8-30g standards. Deed-Restricted Units is a category that is § 8-30g specific and did not exist prior to 1990. Among towns exempt from the Act (including Norwalk and Danbury, which have been under ten percent and subject to the Act in some years), there are almost 4,000 additional Deed Restricted Units. Section 8-30g has also spurred creation of "assisted housing," meaning units built with some amount of public funds (not necessarily subsidies). Although we have not, for this update, done an exact statewide calculation of what "governmentally assisted" units are attributable to § 8-30g, the current statewide (all 169 towns) stock of assisted units has increased by about 25,000 since 1992. In addition, since the predominant model under § 8-30g has been "set aside" development, in which 30 percent (originally 20 percent, moved to 25 percent in 1995 and 30 percent in 2000) of the total units are price-restricted and the rest are market-rate, the affordable units created in compliance with § 8-30g have brought with them the construction of several thousand market-priced but less expensive homes. Overall, § 8-30g has spurred the construction of thousands of lower cost homes as well as thousands more moderately-priced market-rate homes.

2. **Success Stories.** Across the state, there are § 8-30g success stories – nicely-designed, well-constructed, appropriately-situated, mixed-income developments, such as: the new Avalon at Stratford development (opened June 2014); Olde Oak Village in Wallingford; Old

Farms Crossing in Avon; Trumbull Townhomes; AvalonBay in Wilton (two developments), Darien, Orange, and Trumbull; and West Hartford Interfaith Housing / Flagg Road in West Hartford. In several towns, multi-family rental developments approved under § 8-30g are among the largest "tax positive" properties on municipal Grand Lists.

3. **Clear Standards.** After 24 years, the standards used for evaluation of § 8-30g proposals are well-established and clear to judges, municipalities, land use boards, applicants, and consultants.

4. **Documented Denial Reasons Upheld In Court.** *Whenever a municipal zoning commission has effectively documented a substantial health or safety reason to deny an affordable housing proposal, such as a lack of sewage disposal capacity, water supply, water quality impacts, or lack of emergency vehicle access, the courts have upheld that denial. In a December 2014 decision, a Superior Court judge credited a town's concerns about stormwater management and remanded for a further hearing. The courts have also upheld denials when other grounds have been compelling, such as open space preservation in a Glastonbury case.*

5. **Protection Of Municipalities.** In 2000, the statute was amended to provide greater procedural protections for towns and to assure that § 8-30g developments provide a level of affordability not otherwise available in the communities covered by the statute. The amendments have worked as intended.

6. **Workforce Housing Need: Never Greater.** The need for housing that is affordable has never been greater. The leveling in the cost of housing in recent years have not come close to offsetting the 66 percent increase in prices from 2000-2007, and the cost of rental housing is rising while the supply is shrinking. Census figures show a sharp increase in demand for rental housing, while economic and demographic factors – the need to attract young professionals and workers, the high education debt of Millennials, the costs of gasoline and heating oil – all point to an increasing demand for smaller, denser, more affordable, energy-efficient, walkable and, if possible, transit-proximate housing. Connecticut lost a higher percentage of 25-34-year-old workforce than all but two states from 1990-2010. We have lagged the nation in multi-family construction in recent years, and we were 50th in units built per capita in 2011 and the 2004-2013 decade. This lack of supply has kept our rental prices 8th highest in the nation and our home values 6th. Numerous recent studies have documented that the need for lower-cost, multi-family rental. *The reasons for which § 8-30g was adopted in 1989-90 are as compelling today as they were then, and even more so.*

7. **Approvals And Settlements.** In the past several years, a growing percentage of § 8-30g applications has been approved without a court appeal, or settled during an appeal process. Examples include the Green Haven "co-housing" development in Bethany (a combination of open space, active agricultural use, and sweat equity); a 36 unit rental development on Woodhouse Avenue in Wallingford; 73 low income rental units in New Canaan (approved January 29, 2015); a 137 home single-family development in Oxford; Green Falls in North Stonington; Sussex Place West in Madison; Governor's House in Ridgefield; Garden Homes in Darien; Hillcrest Orchards in Southington; Meadowood in Simsbury; Metro Realty / Deming Road in Berlin; AvalonBay in Wilton; and Westwoods LLC in Hamden.

8. **Smart Growth Track Record.** Section § 8-30g developments, because of their location, density, and use of existing infrastructure, provide good examples of consistency with smart growth principles.

9. **Municipal Services And Fiscal Impacts.** In many cases, objectors to § 8-30g applications have predicted increases in crime, taxes, traffic, pollution, etc. These dire predictions have *not* come to pass. In fact, municipal leaders – First Selectmen, Police Chiefs, School Superintendents, and Town Planners –praise § 8-30g developments as a social and fiscal benefit.

10. **Moratorium Provisions.** Moratorium provisions are working as intended. The incentive point system, which rewards towns for housing development that meets § 8-30g standards, with bonus points for family and rental housing, has in fact been utilized by towns that are unlikely to reach 10 percent affordability. In 2014, Ridgefield qualified for a moratorium. When the 73 units approved on January 29, 2015 in New Canaan are built and occupied, that town will qualify. Several other towns have made substantial progress toward a moratorium. Trumbull, Berlin, and Darien have achieved multi-year moratoriums based on approving § 8-30g developments. Berlin is currently in its second moratorium, and Darien has applied for a second one.

11. **Wetlands Protection.** Some have contended that § 8-30g compromises wetlands protection. To the contrary, § 8-30g does not apply to wetlands agencies. In fact, in 2008, three § 8-30g proposals were denied due to wetlands encroachments and the denials were upheld by the courts, applying existing wetlands law. More recently, several proposals have been remanded for further consideration of wetlands issues.

12. **Reducing Economic And Racial Barriers.** One of § 8-30g's original purposes was to reduce economic and racial barriers. While these results are difficult to measure, there is no doubt that § 8-30g has resulted in greater housing opportunities for lower income households in suburban communities. *In the newly-constructed Avalon at Stratford development, the 33 units reserved for moderate and low income households were fully leased in the first six months, with net rents (across one, two, and three bedroom units) ranging from \$825 to \$1,544, and household incomes (from 1 to 5 per household) ranging from \$15,880 to \$54,116.*

13. **A Boost For Incentive Housing Zones.** In the past year, the Incentive Housing Zone ("IHZ") program has turned a corner, with OPM and DOH finally dispensing incentive money. There is no doubt that municipalities are turning to IHZs in part due to the existence of § 8-30g. To weaken or repeal § 8-30g now would undermine the IHZ program. Conversely, to allow moratoria from § 8-30g based on minimal IHZ housing production will undermine both programs, because of their interdependence.

14. **Pending Applications.** Section 8-30g applications, most involving 50 or fewer units, are pending (at local zoning commission or on appeal) in several municipalities, including Easton, Lisbon, East Lyme, East Haven, Redding, Westport, Milford, Hamden, Sterling, and Ledyard.